BILL NO. S-79-09-28

SPECIAL ORDINANCE NO. S- 175-79

ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE TO ISSUE ITS "ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS, SERIES 1979 (REAL ESTATE DEVELOPMENT, LTD. PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, the Fort Wayne Economic Development Commission has been duly created by the City of Fort Wayne, Indiana, and the members of the Commission have been duly appointed and qualified pursuant to law; and

WHEREAS, the Fort Wayne Economic Development Commission has prepared and filed with the City Plan Commission its report entitled "Report of Fort Wayne Economic Development Commission Regarding Facilities to be Constructed for Real Estate Development, Ltd."; and

WHEREAS, the City Plan Commission has filed its written comments concerning the proposed economic development facilities and approving the same; and

WHEREAS, the Fort Wayne Economic Development Commission, after a public hearing conducted on September 18, 1979, adopted a Resolution on the same date, which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities (the "Project") of Real Estate Development, Ltd. complies with the purposes and provisions of I.C. 1971, 18-6-4.5, as supplemented and amended (the "Act"), and that such financing will be of benefit to the health and welfare of the City of Fort Wayne and its citizens; and

WHEREAS, the Fort Wayne Economic Development Commission has heretofore approved and recommended to this Common Council that it adopt this form of Ordinance and has approved the forms of and has transmitted for approval by this Common Council the Loan Agreement between the City of Fort Wayne and the Company (the

"Agreement"), Mortgage and Security Agreement from the Company to the City of Fort Wayne (the "Mortgage"), an Assignment of such Mortgage (the "Assignment") from the City of Fort Wayne to Indiana Bank and Trust Company (the "Trustee") and a Trust Indenture between the City of Fort Wayne and the Trustee (the "Indenture"); now, therefore,

BE IT ORDAINED by the Common Council of the City of Fort Wayne, Indiana, that:

Section 1. It is hereby found and determined that the financing of the economic development facilities constituting the Project and referred to in the Loan Agreement approved by the City of Fort Wayne Economic Development Commission and presented to this Common Council, the issuance and sale of $1,500,000 Economic Development Revenue Bond of the City of Fort Wayne, the use of the net proceeds thereof for the construction and equipment of such facilities, the payment of principal of, premium, if any, and interest on such bond from rental payments pursuant to the Agreement, and the securing of said bond by the mortgaging of the Project to the Trustee pursuant to the Mortgage and the Assignment, all as previously approved by the City of Fort Wayne Economic Development Commission and presented to this Common Council, will be of benefit to the health and welfare of the City of Fort Wayne and its citizens and complies with the purposes and provisions of the Act.

Section 2. The forms of the Agreement, the Mortgage, the Assignment and the Indenture approved by the City of Fort Wayne Economic Development Commission are hereby approved. Such documents collectively shall be considered the "Financing Agreement" referred to in the Act. Such documents shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the City Clerk.

Section 3. The City of Fort Wayne hereby determines that an economic development revenue bond shall be issued pursuant to the

Act in the principal amount of $1,500,000 for the aforesaid purpose. Such bond shall be designated "City of Fort Wayne Economic Development Revenue Bond (Real Estate Development, Ltd. Project)" (the "Bond"), and shall be issued for the purpose of procuring funds to make a loan to Real Estate Development, Ltd. who shall use such proceeds to pay the costs of construction and equipment of the economic development facilities constituting the Project, as more particularly set out in the Indenture and Agreement incorporated herein by reference, which Bond shall be issued in the form and denomination and shall be executed, dated, be subject to redemption on the dates and at the prices as provided in the above described Indenture, and more particularly as provided in the form of Bond appearing in such Indenture, which form is specifically approved. The Bond will be payable as to principal, premium, if any, and interest from the loan payments made by Real Estate Development, Ltd. under the Agreement and from other revenues and income realized under the Agreement, or as otherwise provided in the above described Indenture. The Bond shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Fort Wayne.

Section 4. The Mayor and the City Clerk are authorized and directed to sell the Bond to the Trustee, as the original purchaser thereof at a rate of interest not to exceed 8-3/4% per annum and at a price of 100% of the principal amount thereof. The Bond shall be scheduled to mature in monthly installments over a period of twenty years, as more specifically set forth in the Bond. Payments of principal of, premium, if any, and interest on the Bond shall be made in the manner and on the dates prescribed in the bond and in the Agreement.

Section 5. The Mayor and the City Clerk be and they are hereby authorized and directed to execute the documents constituting the Financing Agreement approved herein on behalf of the City

of Fort Wayne and any other document which may be necessary or desirable to consummate the transaction including, without implied limitation, the Bond authorized herein and financing statements to be utilized in connection with the perfection of security agreements. The forms of the documents constituting the Financing Agreement shall be subject to such changes as are not inconsistent with this Ordinance and as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution of such documents by the Mayor and/or the City Clerk. The signatures of the Mayor and the City Clerk on the Bond and coupons, if any, may be facsimile signatures. The City Clerk is authorized to arrange for delivery of the Bond to the Trustee against payment therefor by such Trustee.

Section 6. At the time of issuance, delivery and payment for the Bond, the Bond Fund Payment (as defined in the Indenture) shall be deposited from the purchase price for the Bond into the Bond Fund (as hereinafter defined).

There is hereby created by the City of Fort Wayne and ordered maintained as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee a trust fund to be designated "City of Fort Wayne - Real Estate Development, Ltd. Construction Fund" (herein called the Construction Fund"). After deducting the Bond Fund Payment required by the preceding paragraph to be paid otherwise than to the Construction Fund, the balance of the proceeds of the Bond shall be deposited in the Construction Fund as the Loan to the Company provided for in the Agreement. Moneys in the Construction Fund shall be disbursed by the Trustee in accordance with the provisions of the Agreement, and the Trustee is hereby authorized and directed to issue its check for each disbursement required by the provisions of the Agreement. The City of Fort Wayne covenants and agrees promptly to take whatever action, if any, is necessary in approving and ordering all such disbursements.

The moneys to the credit of the Construction Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the Trustee as the original purchaser of the Bond, but only to the extent of its interest therein.

Section 7. As provided in the Agreement, payments sufficient in time and amount to pay the Bond service charges as they come due, are to be paid by the Company directly to the Trustee for the account of the City of Fort Wayne and deposited in the Bond Fund. Under the provisions of the Agreement, payments with respect to the promissory note delivered by the Company to the City of Fort Wayne and assigned to the Trustee (the "Note") shall be deposited into the Bond Fund for the account of the City of Fort Wayne and shall constitute Loan Payments. Rentals paid by the Prime Lessee and other lessees are to be paid directly to the Trustee and, to the extent necessary, shall be deposited in the Bond Fund, constituting a credit to the Company against Loan Payments to be made by it.

There is hereby created by the City of Fort Wayne and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated "City of Fort Wayne - Real Estate Development, Ltd. Revenue Bond Fund" (herein called the "Bond Fund"). The Bond Fund (and accounts therein provided for in the Indenture or in the Agreement) and the moneys and investments therein are hereby pledged to and shall be used solely and exclusively for the payment of Bond service charges as they fall due at stated maturity or by redemption or pursuant to any mandatory sinking fund requirements, all as provided herein and in the Indenture and the Agreement, provided that no part thereof (other than any amounts paid as and for any mandatory sinking fund requirements, and except as may otherwise be provided for herein and in the Indenture or the Agreement) shall be used to redeem, prior to maturity, any Bonds.

There shall be deposited into the Bond Fund (and credited, if required by the Indenture or the Agreement, to appropriate

accounts therein), as and when received, (a) all Loan Payments and (b) all other Pledged Receipts, except those amounts required by the Indenture or the Agreement to be deposited in the Construction Fund or any other separate insurance or condemnation proceeds account.

The City of Fort Wayne hereby covenants and agrees that so long as any of the Bonds are outstanding it will deposit, or cause to be deposited, in the Bond Fund Pledged Receipts sufficient in time and amount to pay the Bond service charges as the same become due and payable, and to this end the City of Fort Wayne covenants and agrees that, so long as any Bonds are outstanding, it will diligently and promptly proceed in good faith and use its best efforts to enforce the Agreement, and that, should there be an event of default under the Agreement, the City of Fort Wayne shall fully cooperate with the Trustee to protect fully the rights and security of the Bondholders hereunder. Nothing herein shall be construed as requiring the City of Fort Wayne to use or apply to the payment of Bond service charges any funds or revenues from any source other than Pledged Receipts.

The City of Fort Wayne covenants and agrees, whenever the moneys and investments in the Bond Fund (or otherwise held by the Trustee for such purpose) are sufficient in amount to redeem all of the Bonds then outstanding and to pay interest to accrue thereon to the date or dates of such redemption, to take and cause to be taken, at the direction of the Company, the necessary steps to redeem all of said Bonds on the next succeeding redemption date or dates for which the required notice of call for redemption may be given.

Section 8. At the request of the Company and with the written consent of the Trustee, if the Company is not then in default under the Agreement, the City of Fort Wayne, to the extent permitted by law (including the Act) then in effect and for pur-

poses consistent with the Act (as defined in the Indenture), shall use its best efforts to issue Additional Bonds from time to time to provide loans to the Company for: (i) completion of the Project, including additional costs incurred in providing the Project, or (ii) the acquisition for the Project of additional real estate or interests therein, or repairs to the Project of a major nature arising from casualty or unanticipated conditions, or (iii) the acquisition, construction and installation of additional economic development facilities to be used in connection with the Project and to be located on the site of the Project, or to be used in connection with other facilities located within the boundaries of the City of Fort Wayne which are owned in whole or in part by the Company, or any combination thereof, or (iv) re-funding the Bond or any one or more series of Additional Bonds, or (b) any combination of the foregoing; provided, that the proceeds of any Additional Bonds shall, except to the extent issued for the purpose described in clause (iv), be used solely to pay permissible costs under the Act. Such Additional Bonds shall be on a parity with the Bond and any Additional Bonds theretofore or thereafter issued. Before any Additional Bonds are authenticated there shall be delivered to the Trustee the items required by Section 2.08 of the Indenture and (a) any necessary amendment of the Agreement to provide for increased Loan Payments so that the aggregate of the Loan Payments thereafter payable under the Agreement shall be sufficient in amount to make all required payments into the Bond Fund in order to pay when due Bond service charges on all Bonds then to be outstanding, and for all Additional Payments (as defined in the Agreement) by the Company under the provisions of the Agreement and the Bond Legislation, and (b) either the opinion of nationally recognized bond counsel or a ruling of the Internal Revenue Service of the United States Department of Treasury that the issuance of such series of

Additional Bonds will not adversely affect the exemption from Federal income taxation of the interest paid or payable on any outstanding Bonds.

Section 9. The City of Fort Wayne will restrict the use of the proceeds of the Bond in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Bond are delivered to the Trustee, so that it will not constitute an "arbitrage bond" under Section 103(c) of the Internal Revenue Code of 1954, as amended. The Mayor or any other officer having responsibility with respect to the issuance of the Bond, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Common Council of the City of Fort Wayne, or any officer of the Company, and upon receipt of satisfactory indemnities, to give an appropriate certificate on behalf of the City of Fort Wayne, for inclusion in the transcript of proceedings for the Bond, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 103(c).

Section 10. The City of Fort Wayne hereby elects, with respect to the Bond, to be within the limitations imposed by the provisions of Section 103(b)(6)(D) of the Code and the Mayor or Clerk of the City of Fort Wayne is hereby authorized and directed to perform any and all acts and provide such information as may be required by the Secretary of the Treasury, his delegate or the Internal Revenue Service in order to implement such election, and any and all acts heretofore taken pertaining to such election and relating to such requirements are hereby ratified and confirmed.

Section 11. The provisions of this Ordinance, the Agreement and the Indenture securing the Bond shall constitute a contract between the City of Fort Wayne and the Trustee, and after the issuance of the Bond, this Ordinance shall not be repealed or

amended in any respect which would adversely affect the rights of such Trustee so long as any portion of the Bond or the interest thereon remains unpaid.

Section 12. The actions of the Mayor or any other officer of the City in doing any and all acts necessary in connection with the construction and equipping of the Project and the issuance of the Bond are hereby ratified and confirmed.

Section 13. The proper officers, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary in connection with the construction and equipping of the Project and the issuance of the Bond.

Section 14. All Ordinances or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 15. It is hereby found and determined that all official actions of this Common Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Common Council, and that all deliberations of this Common Council and of any of its committees, if any, that resulted in such official action were taken in meetings open to the public, in full compliance with applicable legal requirements, including I.C. 5-14-1.5-7.

Section 16. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Vivian G. Schmidt
~~Presiding Officer~~
City Councilwoman

Attest:

_____
City Clerk

Presdented by me to the Mayor of the City of Fort Wayne, Indiana, this ____ day of _____, 1979.

_____
City Clerk

Approved and signed by me this ___ day of _____, 1979.

_____
Mayor, City of Fort Wayne, Indiana

APPROVED AS TO
FORM & LEGALITY

William N. Salin, City Attorney

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and ~~the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice~~, at the Council Chambers, City-County ~~Building~~, Fort Wayne, Indiana, on _____, ~~the~~ _____ day of _____, 19__, at _____ o'clock _____ M., E.S.T.

DATE: _____

_____
CITY CLERK

Read the third time in full and on motion by _____, seconded by _____, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES					
BURNS					
HINGA					
HUNTER					
MOSES					
NUCKOLS					
SCHMIDT, D.					
SCHMIDT, V.					
STIER					
TALARICO					

DATE: _____

_____
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. _____ on the _____ day of _____, 19__.

ATTEST: (SEAL)

_____
CITY CLERK

_____
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 19__ at the hour of _____ o'clock _____ M., E.S.T.

_____
CITY CLERK

Approved and signed by me this _____ day of _____, 19__ at the hour of _____ o'clock _____ M., E.S.T.

_____
MAYOR

Bill No. S-79-09-28

REPORT OF THE COMMITTEE ON FINANCE

We, your Committee on Finance to whom was referred an Ordinance

ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE TO ISSUE ITS "ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS, SERIES 1979 (REAL ESTATE DEVELOPMENT, LTD. PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

VIVIAN G. SCHMIDT - CHAIRMAN	Vivian G. Schmidt
WILLIAM T. HINGA - VICE CHAIRMAN	William T. Hinga
JAMES S. STIER	James S. Stier
JOHN NUCKOLS	
DONALD J. SCHMIDT	D. J. Schmidt

10-9-79

CONCURRED IN

DATE _____ CHARLES W. WESTERMAN, CITY CLERK

LEVINE & LERCH
ATTORNEYS AT LAW

Suite 1211
Anthony Wayne Bank Building
FORT WAYNE, INDIANA 46802

Stanley A. Levine
Stephen J. Lerch

Telephone
(219) 422-7431

October 17, 1979

The Honorable Robert Armstrong
Mayor, City of Fort Wayne
Ninth Floor, City-County Building
One Main Street
Fort Wayne, Indiana 46802

Re: Keith Daniel Murray

Dear Mayor Armstrong:

I noted with interest your statement the 10th day of October, 1979, directing your Controller to immediately draft an ordinance authorizing the payment of Keith Murray's medical bills, past and present. As of the 17th day of October, one week later, absolutely nothing has been done to draft this ordinance. As you, I am sure, are aware, October 23 is the last City Council meeting at which this ordinance could be introduced before the election.

Since we waited over a week and nothing has been done and before that over two and one-half years without an affirmative reply, I can only perceive that our definitions of "immediate" are quite different.

Accordingly, I have advised my client that unless the proposed ordinance is filed by Monday, October 22 at noon, I am going to assume that your public statements were untrue, and that it is your intention to let this matter remain without any concrete action until after the election. If that becomes the case, I will take whatever action is necessary beginning October 23 to permit my client and others on his behalf to publicly state what I am setting out in this letter; and, moreover, will, indeed, as I have indicated before, take immediate legal action to enforce my client's rights.

Please understand that although you may have your own reasons choosing not to act before the election, I can assure you that my client and I will so act before the election.

Sincerely,

Stanley A. Levine

SAL:jm
cc: Councilwoman Vivian Schmidt
Charles Westerman, City Clerk